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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

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Arizona Corporation Commission

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IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING ELECTRIC
RESTRUCTURING ISSUES.

DOCKET NO. E-00000A-02-0051

IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY'S REQUEST FOR A
VARIANCE OF CERTAIN REQUIREMENTS
OF A.A.C. R14-2-1606.

DOCKET NO. E-01345A-01-0822

IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING THE
ARIZONA INDEPENDENT SCHEDULING
ADMINISTRATOR.

DOCKET NO. E-00000A-01-0630

IN THE MATTER OF TUCSON ELECTRIC
POWER COMPANY'S APPLICATION FOR
A VARIANCE OF CERTAIN ELECTRIC
COMPETITION RULES COMPLIANCE
DATES.

DOCKET NO. E-1933A-02-0069

IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY
FOR APPROVAL OF ITS STANDED COST
RECOVERY.

STAFF'S RESPONSE TO
AEPCO'S REQUEST FOR
OFFICIAL NOTICE

Arizona Corporation Commission Staff ("Staff") hereby responds to the Supplemental Filing and Request for Official Notice ("Notice") filed by the Arizona Electric Power Cooperative ("AEPCO") on February 2, 2005. In its Notice, AEPCO claims that this proceeding is moot because the Court of Appeals has invalidated A.A.C. R14-2-1609(C)-(J) ("Rule 1609"), the Commission rule that required the affected utilities to establish the AISA. AEPCO appears to imply that the invalidation of Rule 1609 somehow eliminates the Commission's interest in the status of the AISA. For a number of reasons, Staff disagrees with AEPCO's claims.

...

1 **I. The invalidation of Rule 1609 does not eliminate the obligation of all affected utilities to**
2 **support the AISA.**

3 Staff acknowledges that Phelps Dodge Corp. v. Arizona Elec. Power Cooperative, 207 Ariz.
4 95, 83 P.3d 573 (2004), invalidates Rule 1609(C)-(J), the Commission rule that required the affected
5 utilities to establish the AISA. But that decision alone does not necessarily eliminate the obligation
6 of all affected utilities to support the AISA. Both Arizona Public Service Company ("APS") and
7 Tucson Electric Power Company ("TEP") have existing obligations to support the AISA that are
8 independent of Rule 1609.¹ Their obligations therefore survive the Phelps Dodge decision. And
9 while the Phelps Dodge decision invalidated the administrative rule that required the establishment of
10 the AISA, it did not invalidate the AISA itself.

11 **II. The AISA has been established as an independent entity that cannot be "unwound"**
12 **without some degree of action by FERC.**

13 By invalidating Rule 1609(C)-(J), the Court of Appeals determined that the Commission did
14 not have the authority to order the affected utilities to establish the AISA. Phelps Dodge at 112-13,
15 83 P.3d at 590-91. This conclusion, however, is not necessarily helpful in the current circumstances,
16 wherein the AISA has already been incorporated, has already established a board of directors to
17 govern its ongoing operations, and has already received a FERC-approved tariff. Even if the
18 Commission were to decide to withdraw support for the AISA, it is likely that FERC action may be
19 required to completely terminate it. That action would likely have to be initiated by the AISA's Board
20 of Directors.

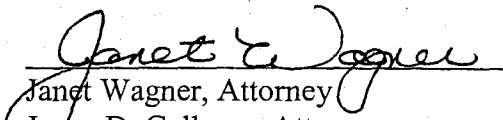
21 To put it another way, the question presented in this proceeding—whether the Commission
22 should support the continued existence of the AISA—has always been a policy question, rather than a
23 legal question. And while the Commission may decide to withdraw its support for the AISA, the
24 Phelps Dodge decision does not compel that result. The Commission is not now precluded from
25 making the choice to continue to support the AISA. So, the issue in this proceeding—whether to
26 continue the AISA—is still open and not rendered moot by the Phelps Dodge decision.

27
28 ¹ See Decision No. 61973 at 18, Attachment 1 at 9 (October 6, 1999) (APS); Decision No. 62103 at 22, Attachment No. 1
at 10-11 (December 29, 1999) (TEP).

1 **III. Conclusion**

2 To summarize, the AISA, in itself, exists independently of A.A.C. R14-2-1609(C) through (J).
3 In addition, the debate over whether the AISA should continue to exist is still open, and survives the
4 Phelps Dodge decision. Therefore, Staff does not believe that these proceedings are moot.
5

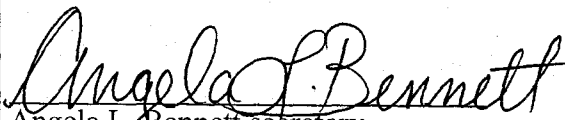
6 RESPECTFULLY SUBMITTED this 11th day of March 2005.
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13 AN ORIGINAL and twenty-one (21)
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of March, 2005 with:

15 Docket Control
16 1200 West Washington Street
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17 A copy of the foregoing emailed to
18 all parties of record this 11th day
of March, 2005
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21 
22 Angela L. Bennett secretary
to Jason D. Gellman
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